

Mailing Address:
National Life Records Center
Drawer 20
Montpelier, VT 05620-3201



Location:
National Life Records Center Building
Montpelier, Vermont

State of Vermont
Water Resources Board

Tel: (802) 828-3309

February 9, 2006

Stephen Silva, Chief
Water Quality Branch
United States Environmental Protection Agency
1 Congress St
Ste 1100 [CWQ]
Boston MA 02114-2023

Re: EPA Approval of Amendments to the Vermont Water Quality Standards

Dear Mr. Silva:

The Vermont Water Resources Board adopted amendments to the Vermont Water Quality Standards on January 25, 2006. These amendments take effect on February 9, 2006. I am writing on behalf of the Board in order to obtain your approval of these amendments pursuant to 40 C.F.R. § 131.5.

Enclosed you will find a Certificate of Legal Authority that the Vermont Attorney General executed pursuant to 40 C.F.R. § 131.6. As this Certificate of Legal Authority indicates, the Board's amendments to the Vermont Water Quality Standards followed the rule making requirements of Vermont law. Attached to the Attorney General's Certificate of Legal Authority and enclosed with this letter are the following additional documents: the Board's January 25, 2006 memorandum to the Secretary of State and the Legislative Committee on Administrative Rules, the Adopting Page and Adopted Rule Cover Sheet for the new rules, and the complete text of these rules.

As you will note from the January 25, 2006 memorandum referenced above, the only substantive change to the Vermont Water Quality Standards is the reclassification of an unnamed tributary of the Winooski River from Class A2 (public water supply) to Class B. This reclassification is reflected by the de-listing of this waterway from section 4-08.A. The amended rules also include a number of minor typographical and stylistic corrections.

Stephen Silva
February 9, 2006
Page 2

You will also note that these amendments were part of a rule making package that included proposals to assign the Class B waters in the White River Basin to water management types. Because of the controversy surrounding these proposals, the Board has not included any of them in the final adopted rule. The Water Resources Panel of the Vermont Natural Resources Board, which is responsible for all future amendments to the Vermont Water Quality Standards, has nearly completed a comprehensive procedure and supporting guidance memorandum for assigning Class B waters to water management types. Once the Panel has adopted this procedure and released the supporting guidance memorandum, the Panel will initiate rule making to incorporate this procedure into section 3-06 of the Vermont Water Quality Standards.

The original rule making package that led to the adopted amendments to the Vermont Water Quality Standards included a proposal to update an outdated statutory deadline for the completion of basin planning in section 1-02.D.1. The current deadline in 10 V.S.A. § 1253(d) is now January 1, 2006. The Vermont Legislature is in the process of extending this deadline again. The House has passed a bill (H. 554) that would make the new deadline December 31, 2009. In its triennial review of the Vermont Water Quality Standards, which is now underway, the Panel will either update the reference to the statutory target for the completion of basin planning or eliminate any reference to it altogether.

The original rule making package that included the attached amendments also included a proposal to reclassify Lake Casper in the White River Basin from Class A2 (public water supply) to Class B, Water Management Type 2. Considerable argument relating to the White River Basin Plan took place over the circumstances under which a proposed reclassification or a proposed water management type for Class B waters requires a use attainability analysis. In keeping with the advice provided by USEPA Region 1, the Board went forward with the reclassification of the unnamed tributary of the Winooski River without a UAA.

The Board left the Panel to grapple with the larger issues relating to UAAs. The Panel will address the circumstances under which a UAA will be required to designate water management types in its forthcoming procedure and guidance. However, the Panel will most likely need to deal with the UAA issue as it relates to reclassifications on a case-by-case basis. A January 11, 2006 memorandum from the Board and the Panel to LCAR explaining these matters in detail is attached.

Because the amendments to the Vermont Water Quality Standards for which the Board now seeks your approval were part of a larger rule making package, most of which the Board chose not to adopt, the Board does not have an annotated version showing the adopted changes. (Most of the annotations in the proposed rules filed with

the Secretary of State are irrelevant because the Board, as noted, decided not to adopt most of these proposals.) However, as noted, it is easy to see that the only substantive amendment is the deletion of the unnamed tributary of the Winooski River from section 4-08.A. The typographical changes were few and very minor. For example, in section 4, we spelled out "miles" throughout rather than using the abbreviation "mi." in some instances. Also in section 4, we added a point zero (".0") to river miles that are whole numbers. (Thus "3" was changed to "3.0.") In section 4-08.B, we corrected the description of Thatcher Brook. In section A.15(b) of Appendix A, we added the word "Pond" where it was previously missing.

As required by the Vermont Administrative Procedure Act, 3 V.S.A. §§ 800-849, the Board developed and implemented a public input strategy before adopting the attached rules. This strategy included a widely advertised public hearing in Essex Junction Vermont with regard to the proposal to reclassify the unnamed tributary of the Winooski River. There was no opposition to the result of this proposal, although as noted, there was a larger discussion of the UAA issue in the context of the White River Basin Plan.

Although the adopted reclassification was not supported by a UAA, the Board did determine that this reclassification is in the public interest. Section 1253(e) of the Vermont Water Pollution Control Act, 10 V.S.A. § 1253(e), enumerates ten factors that the Board, and now the Panel, must consider in determining whether a proposed reclassification will serve the public interest. The Board's consideration of these factors is detailed in a June 29, 2005 memorandum from the Board to LCAR. (The Board shared its analysis of these factors with EPA in a letter the Board sent to Eric Perkins on June 15, 2005.)

The Panel's triennial review of the Vermont Water Quality Standards will address, among other things, the issues raised in the December 12, 1999 letter from Linda M. Murphy, Director of your Office of Ecosystem Protection, to Gerry Gossens, Chair of the Vermont Water Resources Board. One especially important item mentioned in this letter is the need for Vermont to develop an anti-degradation implementation procedure. ANR is committed to completing its development of an anti-degradation implementation procedure for the Panel's review. As currently drafted, H.554 instructs the Panel to adopt an anti-degradation implementation procedure by rule after considering ANR's recommendations.

The Panel, as noted, plans to incorporate a procedure for assigning Class B waters to water management types into section 3-06 of the Vermont Water Quality Standards. Based on this procedure, ANR will submit seventeen basin plans to the Panel over the next several years. All these plans will contain recommendations for

Stephen Silva
February 9, 2006
Page 4

assigning Class B waters to water management types, and a number of these plans may also recommend reclassifications. ANR's ongoing efforts to develop recommendations for numeric nutrient criteria will also eventually require amendments to the Vermont Water Quality Standards. Of course, the next time the Water Quality Standards are amended, the definition of Board will be changed from meaning the Water Resources Board to meaning the Water Resources Panel of the Natural Resources Board.

I would like to express the appreciation of the Board, the Panel, and their staff for the assistance that your office has provided with the enclosed amendments to the Vermont Water Quality Standards and with the challenging task of developing a procedure for assigning water management types to Class B waters. As a result of the restructuring of Vermont's permit appeals system, the Panel and its staff will be able to dedicate themselves to updating and improving the Vermont Water Quality Standards without the distraction of handling permit appeals. We look forward to working with your office as we undertake additional amendments to the Vermont Water Quality Standards.

Please do not hesitate to contact me directly with any questions that you may have or for any additional information that you may need. I can be reached by telephone at 802-828-3063, by email at daniel.dutcher@state.vt.us, or by mail at the above address.

Thank you for your assistance.

Sincerely,



Daniel D. Dutcher
Associate General Counsel

Encs.

c: Bill Beckwith, Water Quality Standards Coordinator, USEPA Region 1

CERTIFICATE OF LEGAL AUTHORITY

TO WHOM IT MAY CONCERN:

This is to certify that the attached amendments to the Vermont Water Quality Standards were duly adopted by the Vermont Water Resources Board pursuant to state law, specifically 3 V.S.A. §§ 831-849, on January 18, 2006.

**William H. Sorrell
Attorney General**

By:


**S. Mark Sciarrotta
Assistant Attorney General**

DATED: 1 FEB 06

Mailing Address:
National Life Records Center
Drawer 20
Montpelier, VT 05620-3201



Location:
National Life Records Center Building
Montpelier, Vermont

State of Vermont
Water Resources Board

Tel: (802) 828-3309

To: Louise Corliss, APA Clerk, Secretary of State's Office
Katie Pickens, LCAR Clerk

From: John F. Nicholls, Chair
Vermont Water Resources Board

Date: January 25, 2006

Subject: Vermont Water Quality Standards (VT Rule 05P003)
Adoption of Final Rule

At its meeting on January 24, 2006, the Vermont Water Resources Board voted to adopt a final rule in the above referenced matter. LCAR approved this rule at its meeting on January 18, 2006. See 3 V.S.A. § 843(a).

Enclosed please find the text of the final rule and all associated forms required by the Secretary of State. The adopted rule will take effect fifteen days from today's date--that is on February 8, 2006. See 3 V.S.A. § 845(d).

As a result of concerns expressed by LCAR on July 28, 2005, the text of the adopted rule is not the same as the text of the final proposed rule. See 3 V.S.A. § 843(b). The adopted rule reclassifies an unnamed tributary of the Winooski River from Class A2 (public water supply) to Class B, as originally proposed. However, the adopted rule does not include any of the proposed amendments relating to the White River Basin or the proposed housekeeping amendments to the Vermont Water Quality Standards, except for minor typographical corrections. These matters will be handled by the Water Resources Panel of the Vermont Natural Resources Board in future rule making proceedings. As a result of Permit Reform, 2004 Vt. Acts and Resolves No. 115, the Water Resources Board will now conclude its business.

The positive economic impacts relating to the reclassification of the unnamed tributary of the Winooski River are not affected by the changes in the rule since the filing of the final proposal. The reclassification of the unnamed tributary of the Winooski River will be effected by deleting the listing of this waterway from section 4-08.A of the Vermont Water Quality Standards. The adopted rule will not substantively amend the Vermont Water Quality Standards in any other way.

Memorandum to Louise Corliss and Katie Pickens
January 25, 2006
Page 2

The Water Resources Board and LCAR met on a number of occasions to extend the deadline for the Water Resources Board to complete rule making in this matter. See 3 V.S.A. § 842(a). On November 30, 2005, LCAR extended the Water Resources Board's deadline for filing the adopted rule to May 3, 2006. LCAR extended the rule making period to afford the Water Resources Board an opportunity to reconsider the final proposed rules relating to the White River Basin. Ultimately, as noted, the Water Resources Board decided not to proceed with those rule proposals and to allow the Water Resources Panel of the Natural Resources Board to work on new procedures relating to basin planning.

Please contact the Board's counsel, Daniel D. Dutcher, with any questions that you may have. Mr. Dutcher may be reached by telephone at 828-3063 or by email at daniel.dutcher@state.vt.us.

Thank you for your attention to these matters.

F:\daniell\Water Quality Standards\Memo to SOS and LCAR (Jan 25 2006).wpd

ADOPTING PAGE

Note: This form must be filed three times during the rulemaking process, viz., with the Proposed Rule Cover Sheet, Final Proposal Cover Sheet, and Adopted Rule Cover Sheet.

Please complete the following:

1. Title of rule:
Vermont Water Quality Standards--Unnamed Tributary of the Lower Winooski River
2. Agency:
Vermont Water Resources Board
3. Agency's reference number, if any:

4. This is a(n)

- ☒ Amendment- changes to an already existing rule.
- ☐ New rule- adopts a rule that did not previously exist.
- ☐ Repeal-repeals a rule that previously existed.

Except for new rules, please give the name of the existing rule and the date on which it was last amended or adopted: Vermont Water Quality Standards, amended effective July 2, 2000

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with the filings of proposed rules and final proposals. Filing a paragraph or page of a larger rule is not sufficient. Similarly, if the rules of the agency have been published as part of the Code of Vermont Rules, the agency shall file the annotated text, if possible, using the appropriate page or pages of the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

ADOPTED RULE: COVER SHEET

SOS# _____
(Do Not Complete)

Note: File this form with the Secretary of State and the Legislative Committee on Administrative Rules.
You must file an adopting page and the text of the adopted rule with this cover sheet.

Please complete the following.

1. Title or subject of adopted rule:
Vermont Water Quality Standards--Unnamed Tributary of the Lower
Winooski River
2. Proposed Rule # previously assigned by the Secretary of State 05 P-003.
3. Agency:
Vermont Water Resources Board
4. Statutory authority for this rule:
10 V.S.A. sec. 1253
5. This filing has ☒ has not ☐ changed since the filing of the final proposal. If it has changed,
please attach a letter to this filing explaining in detail what changes were made, citing chapter and
section of those changes where applicable, including changes in economic impact.
6. The Legislative Committee on Administrative Rules did not object ☒ objected ☐ to the final
proposal.
7. Procedural history of adoption:

The rule was filed with ICAR on the following date: :12/13/04.

This rule was filed in proposed form with the secretary of state on the following date: 1/18/05.

This rule was published in newspapers of record on 2/3/05 and 2/10/05.

This rule was the subject of public hearings held as follows (give date, time, and place):

Tuesday, March 3, 2005 beginning at 3:00 p.m. in the large conference
room of the ANR District Fish and Wildlife Building, 111 West St, Essex
Junction, VT

The deadline for public comment for this rule was 3/31/05.

This rule was filed in its final proposed form with the secretary of state and with the Legislative
Committee on Administrative Rules on 6/30/05.

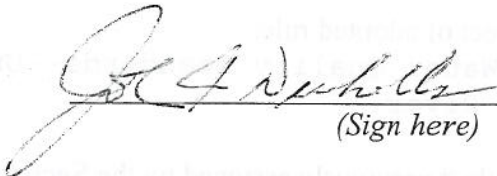
This rule was considered by the Legislative Committee on Administrative Rules on 7/28/05.

This rule is filed in its adopted form on 1/25/06.

The effective date of this rule will be 2/8/06 (must be no sooner than 15 days following the filing of the adopted rule).

CERTIFICATION: AS THE ADOPTING AUTHORITY (see 3 V.S.A. § 801(b)(11) for a definition) OF THIS RULE, I HEREBY CERTIFY THAT THE PROCEDURAL REQUIREMENTS OF TITLE 3, CHAPTER 25 HAVE BEEN MET. I ALSO APPROVE THE CONTENTS OF THIS FILING.

Date: 1/24/06



(Sign here)

John F. Nicholls, Chair
Vt Water Resources Board
(Type name here please)

An adopting page and a text of the rule were filed with this coversheet

APA Clerk's Initials _____